



DIRECT MARKETING SERVICES

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Federal Communications Commission  
1919 M Street NW  
Washington, DC 20554

Federal Communications Commission  
Office of the Secretary

May 25, 1992

Re: In the Matter of The Telephone Consumer Protection Act of 1991  
CC Docket No. 92-90  
Comments of LCS Industries, Inc.

Dear Commissioners:

I am writing on behalf of LCS Industries, Inc. ("LCS") to comment on the Federal Communications Commission's Notice of Proposed Rulemaking in the Matter of The Telephone Consumer Protection Act of 1991, CC Docket No. 92-90.

LCS is a leader in direct marketing services. It supplies the industry with telemarketing and computer services, data base maintenance, order processing, inquiry fulfillment, data entry and mailing list brokerage, management, compilation and fulfillment.

Our full service telemarketing division employs over 135 people with a payroll in excess of \$750,000. It has over forty (40) clients including many Fortune 500 companies, market research firms, non-profit entities (including one major consumer organization), telephone companies, public utilities and state government agencies. In 1992, it will place over two million calls in over 125,000 call hours. Its efforts will generate income for its clients in excess of \$50 million. It is a growing mid-size telemarketer and as such, the future of its business is dependent on rational regulation and consumer trust. These comments are directly related to LCS's telemarketing business.

The Commission requested comments with respect to "the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations, whether local or interstate . . . (and) whether there is a need for additional Commission authority to further restrict telephone solicitations, including those calls exempted under 47 U.S.C. Sec. 227(a)(3)." Exempted calls include ones made for charitable purposes and ones made to "any person with that person's prior express invitation . . . or to any person with whom the caller has an established business relationship . . . ." The law also exempts calls made for political purposes as well as purely intrastate calls.

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The threshold issue is to define precisely the privacy interest which is allegedly involved in telephone solicitations. Once that interest is defined, then the Commission can analyze the societal costs or benefits involved in protecting it. The Commission should craft its regulation narrowly in light of that interest only.

Congress made clear that the privacy interest involved was not a weighty one. Congress' findings said that "unrestricted telemarketing . . . can be an intrusive invasion of privacy". It equated the intrusion caused by such calls with a "nuisance". It recognized that this nuisance had to be weighed against "commercial freedoms of speech and trade." With further reflection Congress might also have recognized that the relative environmental efficiency of telemarketing should be factored into the equation as a societal benefit. Unlike all forms of print advertising, telemarketing creates no solid waste.

The Commission should note that Congress based its findings that telephone calls may involve a privacy interest on a relatively minor species of that right -- intrusion on solitude. Potentially more important privacy rights such as public disclosure of private facts, publicity placing one in a "false light", appropriation of one's name or likeness for commercial exploitation or even physical intrusion are not involved here. No physical or financial harm is caused by a breach of the privacy interest involved.

We suspect that if the complaints which the Commission and Congress has received about telemarketing are examined carefully, one will find that many of them do not involve privacy issues at all. Rather, many of them involve consumer protection issues. As a general proposition, we support strengthening of consumer protection rules involving telemarketing because such action will improve the credibility of responsible telemarketers. Complaints about the "bad actors" who we concede still exist in this business should not be used to prevent legitimate marketers from providing goods and services to consumers through use of the telephone.

We believe LCS is a responsible member of the direct marketing industry. Its practices demonstrate that telemarketing provides a positive societal benefit to consumers by allowing easy access to goods in which consumers have an interest. LCS targets its audience. Those potential customers who are called have been identified as likely to respond. Often they are prior customers of LCS's clients. It does not use sequential random dialing equipment or recorded or artificial voices. It does not make saturation calls to a geographic area.

Federal Communications Commission  
May 25, 1992  
Page 3

The experiences of LCS and its executives indicates that far more people respond to telemarketing calls than complain about them. Fewer than two (2%) percent of the people with whom LCS communicates indicate that they want their names removed from telephone solicitation lists. Depending upon the offer between fifteen (15%) percent and forty (40%) percent of the people called respond in a positive fashion to LCS calls for commercial or charitable purposes. A higher number respond to market research calls. Significantly, these percentages are basically the same for calls to businesses and residences and calls on behalf of business entities, charities and political parties. Obviously, people who have a prior relationship or close affinity with the client for whom LCS is placing calls have a greater tendency to respond, and lower tendency to complain.

In the experience of LCS executives who have worked in other companies there is a significant variation in one area of interest to the Commission. Some local companies place "saturation" calls to all homeowner phones in a community, for example, to sell home improvements, insurance, security systems or lawn services. Complaints are higher and responses lower to such calls which may not be targeted based on known affinities of the consumer. Although such calls are legitimate, the example highlights the fact that a local call does not necessarily raise less of a privacy interest than a national one.

The Commission requested comments on mechanisms to "restrict live operator telephone solicitation to subscribers." LCS supports use of industry self-regulatory "do not call" lists and company generated "do not call" lists. LCS subscribes to the Direct Marketing Association's Telephone Preference Service. It also assists its clients maintain "do not call" lists. We believe that this self-regulatory approach works. It is a waste of LCS's and its clients' time to call people who will not respond to any telephone offer. The cost of maintaining a voluntary system is relatively low, and based upon the small volume of requests by people not to receive calls, the current system works. If the Commission feels constrained to move beyond the current self-regulatory system, it should consider codifying current company generated "do not call" mechanisms.

Federal Communications Commission  
May 25, 1992  
Page 4

The Commission requested specific comments on the national database alternative. We are not in a position to provide the specific information requested by the Commission. We can categorically say that despite our sophistication as a telemarketer and a direct response computer service bureau, we could not maintain a system at the level of sophistication which appears to be necessary to meet the description contained in the Notice of Proposed Rulemaking without excluding current business. We doubt that any of our competitors could either.

There is a flaw in the concept of a national "do not call" database. To be effective such a database would have to be promoted. People would have to be told (presumably via public service advertising) that they could avoid unwanted telephone calls by providing their names to the database. Any such advertising would be untrue, unfair and deceptive. The national "do not call" database would not exclude charitable, political or local telemarketing. As a practical matter, it would not be used by fraudulent "boiler-room" operations either. Thus, many and perhaps most of the calls which some people find annoying would not be prevented by such a database even under ideal circumstances.

The Commission mentions the possibility of a "network technology" which would enable parties (presumably for a fee) to avoid calls from certain numbers. To our knowledge no such system now exists. The Commission should write a rule which can be easily adapted if and when a network solution becomes available.

The Commission requested comment on the scope of the exclusion provided by the statute for calls to former or existing clientele. LCS believes that if any definition of prior customer is necessary it should include all people who have bought from or requested information from a company. In reality, use of an in-house do-not-call system should suffice to protect those members of the public who are bothered by telephone calls.

Finally, the Commission requested specific comments on calling hours proposals. LCS places no calls after 9:00 pm (call recipients's time). In fact, LCS's telephone equipment is programmed to prevent placement of calls after 9:00 pm. While we believe our practice makes good business sense, we see no need for it to be mandated to protect any legitimate privacy interest.

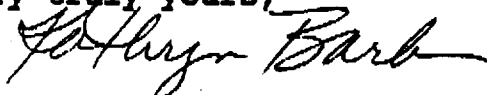
Federal Communications Commission  
May 25, 1992  
Page 5

In conclusion, we oppose any mandatory national "do not call" database. We support continuation of voluntary systems. If the Commission finds some regulatory scheme necessary we suggest that one based on individual communications from a consumer to individual companies is most workable at this time. However, given the rapid changes taking place in telecommunications technology, we believe that a network solution to perceived problems involving privacy interests may be available eventually. Any regulations which are written should contain the flexibility to make use of these systems when they become available.

We have enclosed a facsimile original and nine copies of these Comments. A signed original copy is available in our office.

We appreciate the even-handed approach the Commission has taken to its responsibilities under the Act.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathryn Barber", written in dark ink.

Kathryn Barber  
President  
Outbound Telemarketing Division